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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 ERIC LAWRENCE WRIGHT,

12 Plaintiff,

13 v.

14 CITY OF TACOMA, et al.,

15 Defendants.

Case No. C08-5388RBL

REPORT AND
RECOMMENDATION

Noted for December 19, 2008

16 This matter has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§
17 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. Accordingly, the
18 following report and recommendation is hereby submitted.

19 FACTUAL BACKGROUND

20 Plaintiff, Eric L. Wright, is currently incarcerated at the Pierce County Jail. Plaintiff's complaint
21 names several defendants involved with plaintiff's criminal case or conviction. According to the Complaint
22 and subsequent pleadings filed in this matter, it appears Plaintiff's house was searched in July 2005.
23 Sometime during the search of the home, Plaintiff suffered a heart attack or heat stroke and he was taken to
24 the hospital. Plaintiff was arrested and charged with certain unknown crimes related to the search of his
25 home. According to the pleadings the criminal proceedings related to the matter continued at the time this
26 matter was filed.

27 On August 25, 2008, the undersigned reviewed the complaint and issued an order to show cause why
28 the matter should not be dismissed because it appeared plaintiff's claims necessarily called into question the

1 fact or duration of a criminal conviction and/or sentence. See Doc. 8.

2 With respect to claims made that called into question the validity of Mr. Wright's pending criminal
3 case or conviction, the court explained that Plaintiff is required to show that he has successfully petitioned
4 the state and/or federal courts for a writ of habeas corpus prior to filing a civil action pursuant to § 1983
5 seeking injunction and money damages and cited Heck v. Humphrey, 114 S.Ct. 2364 (1994). The court
6 originally directed plaintiff to show cause why the matter should not be dismissed by not later than August
7 15, 2008. Since then Plaintiff has filed several pleadings and has been granted several extension of time to
8 properly respond. Significantly, Plaintiff has not responded with sufficient facts or evidence to show that
9 this matter should continue. After reviewing the file and plaintiff's documents, the undersigned
10 recommends that the Court dismiss this § 1983 action.

11 DISCUSSION

12 In June 1994, the United States Supreme Court held that "[e]ven a prisoner who has fully exhausted
13 available state remedies has no cause of action under § 1983 unless and until the conviction or sentence is
14 reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." Heck v. Humphrey,
15 114 S.Ct. 2364, 2373 (1994). The court added:

16 Under our analysis the statute of limitations poses no difficulty while the state challenges are
17 being pursued, since the § 1983 claim has not yet arisen. . . . [A] § 1983 cause of action for
18 damages attributable to an unconstitutional conviction or sentence does not accrue until the
conviction or sentence has been invalidated.

19 Id. at 2374.

20 It is clear to the court that Mr. Wright is raising issues in his § 1983 complaint which necessarily
21 calls into question that validity of Plaintiff's current incarceration, his pending criminal case or conviction.
22 Plaintiff has failed to show the court that his conviction or sentence has been reversed, expunged,
23 invalidated, or impugned by the grant of a writ of habeas corpus. Under Heck, plaintiff's § 1983 claim has
24 not yet accrued, and therefore is not cognizable.

25 The court finds that such allegations should be dismissed pursuant to the law set forth above.
26 Plaintiff shall not be permitted to seek such relief or pursue such claims via § 1983, without first successfully
27 petitioning for his release and/or expungement of his parole revocation by way of petition for writ of habeas
28 corpus or similar state procedures.

1 CONCLUSION

2 The undersigned recommends that the Court dismiss this action prior to service in accordance with
3 Heck v. Humphrey. The dismissal will not prejudice plaintiff's right to file a § 1983 claim if his pending
4 criminal matter or current sentence is later invalidated.

5 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the
6 parties shall have ten (10) days from service of this Report to file written objections. *See also*
7 Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of
8 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the
9 clerk is directed to set the matter for consideration on **December 19, 2008**, as noted in the caption.

10 DATED this 28th day of November, 2008.

11 /s/ J. Kelley Arnold

12 J. Kelley Arnold

13 United States Magistrate Judge
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